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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,838	06/27/2003	Ronald K. Hampton JR.	HAMR 8415 U1	7624
1688	7590	04/13/2005	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			WARREN, DAVID S	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,838

Applicant(s)

HAMPTON, RONALD K. 

Examiner

David S. Warren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-23, 25, 26 is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10032003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 24 is objected to because of the following informalities: The Examiner surmises that in claim 24 the Applicant intended to claim "a heel pad affixed to the hee/ end of the base." [emphasis added] Clarification is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Livingston (4744279) in view of Franzmann (4,491,050). Regarding claim 27, Livingston discloses the use of a bass drum assembly for use by a drummer, comprising a frame (16) have a first electrical contact (55, 117). Livingston also discloses that a transducer (or contact) can be mounted on an upper (fig. 5) or lower (fig. 2) position. Livingston does not disclose the use of a plural contacts for contacting the upper and lower surface of a pedal. Franzmann discloses the use of a foot pedal for

a musical instrument having upper and lower surfaces for making switching contact. Specifically, Franzmann discloses the use of a first contact (fig. 5; position IV) and a second contact (fig. 5; position VI) – see col. 7, paragraphs 3 and 4; col. 8, paragraphs 1 and 2. Both Livingston and Franzmann disclose a biased foot pedal for activating a musical instrument. The mere act of placing electrical contacts on an upper and lower surface are deemed design choice and are functionally equivalent to the Franzmann apparatus. It would have been obvious to one of ordinary skill in the art to combine the teachings of Franzmann and Livingstone to obtain a foot pedal control for use with a drum having plural electrical contacts on an upper and lower surface thereof. The motivation for making this combination is that by adding another contact to Livingstone, a larger number of switching possibilities are available as well as the creation of two outcomes per foot stroke.

Allowable Subject Matter

Claims 1 – 26 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Regarding independent claims 1, 24 and 25, the prior art does not disclose the use of a foot pedal having a first striker below a lower surface of the pedal, a second striker above the upper surface of the pedal, a first transducer and second transducer for contacting first and second strikers, respectively. Specifically, the prior art does not

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disclose the use of providing a first striker and vibration transducer below the pedal and a second striker and vibration transducer above the pedal surface. Regarding claim 17, the prior art does not disclose the use of a foot pedal having a toe end which has an upper striker and lower striker, an upper striking surface positioned above the upper striker and a lower striking surface positioned below the lower striker, wherein upper and lower striking surfaces have vibration detecting transducers.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Simpson (3,677,128) and document to O'Donnell (2002/0152872) disclose the use of a foot pedal for a drum wherein a single up/down stroke elicits two beats of the drum. The patent to Austin (4,141,273) discloses the use of a foot controlled metronome by both forward and reverse movements of the pivotal pedal.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2800 ext 37. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw



MARLON T. FLETCHER
PRIMARY EXAMINER